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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,347	09/19/2003	Michael D. Green	023340-0201	4647
30542	7590	11/16/2006	EXAMINER	
FOLEY & LARDNER LLP P.O. BOX 80278 SAN DIEGO, CA 92138-0278			PATEL, TAJASH D	
			ART UNIT	PAPER NUMBER
			3765	
DATE MAILED: 11/16/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/666,347

Applicant(s)

GREEN, MICHAEL D.

Examiner

Tejash D. Patel

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 10, 11, 14-18 and 20-28 is/are pending in the application.
- 4a) Of the above claim(s) 20-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 10, and 14-18 is/are rejected.
- 7) ☒ Claim(s) 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Election was made on October 24, 2006 for Group I which pertains to claims 1-5, 10, 11 and 14-18. Claims 20-28 has been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Modglin (US 4,508,110). Modglin discloses a body garment/jacket having a torso portion including a manually tension control element located on the front comprising a corset arrangement (23) extending from a top portion of the torso portion downward through at least a portion of a abdominal region. Further, a pair of adjustable flaps (30) being substantially secured substantially to a side of the torso portion with each of the flaps being positioned over the abdominal region has a hook and loop fastener (27) thereon and secured to an opposing side thereof as shown in figures 3 and 4.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-5, 10, 14 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Auslender in view of Min (US 5,666,558).

Auslender discloses an integral body garment having a torso portion including a manually tension control element located on the front comprising a corset arrangement extending from a top portion of the torso portion downward through at least a portion of a abdominal region as shown in figure 1. Further, a pair of adjustable flaps (11) being tied are substantially secured substantially to a side of the torso portion as shown in figure 5. Also, the torso portion includes a plurality of pockets as shown in figure 1. However, Auslender does not show the pair of flaps having hook and loop fastener and a accessory strap.

Min discloses a torso garment with an accessory strap (26) positioned thereon with a pocket having an audio recording device (40,62) therein, col. 2, lines 45-52.

It would have been obvious to one skilled in the art at the time the invention was made to recognized that the adjustable pair of flaps can be provided with hook and loop material instead of being tied as an alternative but equivalent means of positioning the flaps about the torso as known in the textile art. Furthermore, it would have been obvious that the garment of Auslender can be provided with an accessory strap as taught by Min so that desired music or audio can be heard by the user when the device is worn or depending on the end use thereof.

With regard to claim 14, the specification offers not unexpected results or critically from the use recited material. Therefore, it would have been obvious that the garment of Auslender when viewed with Min can be made of any desired material that was available at the time the device was made or depending on the particular application thereof.

Response to Amendment

6. The election filed on October 24, 2006 has been considered. In view of such, a newly discovered prior art has prompted this office action to be made new-non Final.

Allowable Subject Matter

7. Claim 11 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


Art Unit: 3765

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tejash Patel whose telephone number is (571) 272-4993. The fax phone number for this group is (571) 273-8300.

November 13, 2006



**TEJASH PATEL
PRIMARY EXAMINER**